

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matter of:)
)
) Case Number: 2012-CE-1508
CNA International Inc.)
d/b/a MC Appliance Corporation)
(room air conditioners))
)

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: July 9, 2012

Number of alleged violations: **3650** (365 days, 10 models)

Maximum possible assessment: **\$730,000**

Proposed civil penalty: **\$73,000**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that CNA International Inc. d/b/a MC Appliance Corporation (“MC Appliance”) has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (“the Act”), and 10 C.F.R. 429.12.

Specifically, DOE alleges:

1. MC Appliance has manufactured¹ a variety of Generations brand room air conditioners that it has distributed in commerce in the U.S., including, but not limited to, the following basic models (“subject basic models”):

<u>MC Appliance Subject Basic Models</u>		
GAC05ERS3A	GAC06ERS3A	GAC08ERS3A
GAC109ERS3B	GAC10ERS3A	GAC129ERS3B
GAC12ERS3A	GAC59ERS3B	GAC69ERS3B
GAC89ERS3B	GAD259ERS3B	GAH0891ERS3Q
GAH1091ERS3Q	GAH1092ERS3Q	GAH1291ERS3Q
GAH1292ERS3Q	GAM159ERS3B	GAM189ERS3B

¹ “Manufacture” means to manufacture, produce, assemble or import. 42 U.S.C. § 6291.

2. MC Appliance has distributed for at least 365 days², and continues to distribute, the subject basic models in commerce in the U.S.
3. The subject basic models are “covered products” as defined in 10 C.F.R. § 430.2.
4. MC Appliance failed to certify that each subject basic model meets the applicable energy conservation standards before distribution of the subject basic models in U.S. commerce as required by 10 C.F.R. § 429.12³.
5. Failure to certify a covered product as required by 10 C.F.R. § 429.12 is a prohibited act pursuant to 10 C.F.R. § 429.102(a)(1) and subject to civil penalty as described in 10 C.F.R. § 429.120.

The following information is provided in question and answer format to help explain MC Appliance’s legal obligations and options.

What do I do now?

DOE is offering a settlement of **\$8,000** if you submit the signed compromise agreement within thirty (30) days of the date of this notice. As part of that settlement, you must pay the fine within thirty (30) days of the date of issuance of an order adopting the agreement and must properly certify all models available for sale in the United States within sixty (60) days of the date of issuance of an order adopting the agreement. If you do not submit the required certification documents within 60 days of settlement, you will be subject to the maximum penalty of \$200 per day per basic model for every day you do not certify each basic model.

You may settle the case for **\$16,000** if you submit the signed compromise agreement between 31 and 60 days after the date of this notice. As part of that settlement, you must pay the fine within thirty (30) days of the date of issuance of an order adopting the agreement and must properly certify all models available for sale in the United States within sixty (60) days of the date of issuance of an order adopting the agreement. If you do not submit the required certification documents within 60 days of settlement, you will be subject to the maximum penalty of \$200 per day per basic model for every day you do not certify each basic model.

If you do not choose to settle the case, DOE may seek the **maximum penalty** (\$730,000) authorized by law. You have other options as described below.

What are my other options?

You must select Option 1 or Option 2 below if you do *not* agree to DOE’s settlement offer within thirty (30) calendar days.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the order assessing such penalty will

² If MC Appliance contends that it has distributed the specified basic models in commerce for less than 365 days, please provide documentation in response to this notice.

³ Certification requirements were previously located at 10 C.F.R. § 430.62 and were moved to 10 C.F.R. Part 429, Subpart B by rule. See 76 Fed. Reg. 12,422 (Mar. 7, 2011).

result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts *de novo*.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge (“ALJ”) for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

When must I respond?

You must submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to pay the **lowest fine (\$8,000)**. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. Otherwise, if you do not settle the case, DOE will refer the case to an ALJ as described in Option 2.

How should I submit my response?

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: david.case@hq.doe.gov

By fax to: (202) 586-3274

By FedEx to: David Case
U.S. Department of Energy
Office of the General Counsel (GC-32)
1000 Independence Ave., SW
Washington, DC 20585

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days of the date of this Notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing (Option 2, above).

What should I include in my response?

- 1) If you wish to accept DOE’s settlement offer, you should submit the signed Compromise Agreement. If you do not wish to accept DOE’s settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.
- 2) Provide your Taxpayer Identification Number (TIN). The Debt Collection Improvement Act (“DCIA”) requires all federal agencies to obtain the TIN in any case that may give rise to a debt to the government.

How did you calculate the maximum possible assessment?

Federal law sets a maximum civil penalty for each day you fail to submit to DOE the required information for a covered product. By regulation, you must submit a certification report for each

basic model. Therefore, your maximum penalty is calculated based on each day you distributed each basic model in commerce in the U.S. without having submitted a valid certification report. In the maximum penalty calculation in this Notice, DOE assumes that each basic model has been in distribution in the United States for at least 365 days. DOE is not pursuing violations more than one (1) year old at this time. DOE may pursue violations up to five (5) years old if the case goes to hearing. The maximum penalty is \$200 per day. 10 C.F.R. § 429.120; *see also* 74 Fed. Reg. 66,029, 66,032 (Dec. 14, 2009) (increasing maximum penalty to \$200 per day effective Jan. 13, 2010).

Issued by:



Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement